



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-136984-12]

RIN 1545-BL21

Section 752 and Related Party Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 752 of the Internal Revenue Code (Code) relating to recourse liabilities of a partnership and the special rules for related persons. The proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and request for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-136984-12), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-136984-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-136984-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Caroline E. Hay or Deane M. Burke, at (202) 317-5279; concerning the submissions of comments and requests for a public hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-5179 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 752 regarding a partner's share of recourse partnership liabilities.

Section 752(a) provides, in general, that any increase in a partner's share of partnership liabilities (or an increase in a partner's individual liabilities by reason of the assumption by the partner of partnership liabilities) will be considered a contribution of money by such partner to the partnership. Conversely, section 752(b) provides that any decrease in a partner's share of partnership liabilities (or a decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities) will be considered a distribution of money to the partner by the partnership.

When determining a partner's share of partnership liabilities, the regulations under section 752 distinguish between two categories of liabilities—recourse and nonrecourse. In general, a partnership liability is recourse to the extent that a partner or related person bears the economic risk of loss as provided in §1.752-2 and nonrecourse to the extent that no partner or related person bears the economic risk of loss. See §1.752-1(a)(1) and (2).

These proposed regulations provide guidance as to when and to what extent a partner is treated as bearing the economic risk of loss for a partnership liability when multiple partners bear the economic risk of loss for the same partnership liability (overlapping economic risk of loss). In addition, these proposed regulations provide guidance when a partner has a payment obligation with respect to a liability or makes a nonrecourse loan to the partnership (and no other partner bears the economic risk of loss for that liability) and such partner is related to another partner in the partnership.

### **Explanation of Provisions**

#### **1. Overlapping Risk of Loss**

Under §1.752-2(a), a partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. Section 1.752-2(b)(1) provides that a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner or related person would be obligated to make a payment on the partnership obligation to any person or a contribution to the partnership (payment obligation) because the liability becomes due and payable and the partner or related person would not be entitled to reimbursement from another partner or a person that is related to another partner. Moreover, under §1.752-2(c)(1), a partner bears the economic risk of loss for a partnership liability to the extent that the partner or a related person makes (or acquires an interest in) a nonrecourse loan to the partnership and the economic risk of loss for the liability is not borne by another partner. Section 1.752-4(c) provides that the amount of an indebtedness is taken into account only once.

The IRS and the Treasury Department are aware that there is uncertainty as to how partners should share a partnership liability if multiple partners bear the economic risk of loss with respect to the same liability. The temporary regulations under §1.752-1T(d)(3)(i) that preceded the existing final regulations under section 752 addressed the issue of overlapping economic risk of loss by providing that “if the aggregate amount of the economic risk of loss that all partners are determined to bear with respect to a partnership liability (or portion thereof) ... exceeds the amount of such liability (or portion thereof), then the economic risk of loss borne by each partner with respect to such liability shall equal the amount determined by multiplying the amount of such liability (or portion thereof) by the fraction obtained by dividing the amount of the economic risk of loss that such partner is determined to bear with respect to that liability (or portion thereof) by the sum of such amounts for all partners.” The rule in the temporary regulations, however, was not included in the final regulations in part in response to comments that the proposed regulations addressed too many topics generally and should be simplified to focus on more basic concepts. See 56 FR 36704-02 (1991-2 CB 1125).

The IRS and the Treasury Department have received comments requesting guidance in this area. The IRS and the Treasury Department continue to balance the importance of simplicity in regulations under section 752 against the utility of providing additional guidance on identified issues. In light of comments received, the IRS and the Treasury Department believe that a rule is needed to address overlapping economic risk of loss due to uncertainty under the current regulations and believe that the concepts from the temporary regulations regarding the overlapping risk of loss rule

provide a reasonable approach in addressing how a partnership liability should be shared among partners bearing the economic risk of loss for the same liability. Accordingly, these proposed regulations adopt the rule from the temporary regulations.

## 2. Tiered Partnerships

The rules under section 752 regarding the allocation of liabilities in a tiered partnership structure also may result in overlapping economic risk of loss. Section 1.752-2(i) provides that if a partnership (the “upper-tier partnership”) owns (directly or indirectly through one or more partnerships) an interest in another partnership (the “lower-tier partnership”), the liabilities of the lower-tier partnership are allocated to the upper-tier partnership in an amount equal to the sum of the following: (1) the amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and (2) the amount of any other liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss. Section 1.752-4(a) further provides that an upper-tier partnership’s share of the liabilities of a lower-tier partnership (other than any liability of the lower-tier partnership that is owed to the upper-tier partnership) is treated as a liability of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

The regulations therefore allocate a recourse liability of a lower-tier partnership to an upper-tier partnership if either that upper-tier partnership, or one of its partners, bears the economic risk of loss for the liability. When a partner of the upper-tier partnership is also a partner in the lower-tier partnership, and that partner bears the economic risk of loss with respect to a liability of the lower-tier partnership, the current regulations do not provide guidance as to how the lower-tier partnership should allocate

the liability between the upper-tier partnership and the partner. The IRS and the Treasury Department believe that the lower-tier partnership should allocate the liability directly to the partner. The IRS and the Treasury Department believe that this approach is more administrable and ensures that the additional basis resulting from the liability is only for the benefit of the partner that bears the economic risk of loss for the liability. Thus, the proposed regulations modify the tiered-partnership rule in §1.752-2(i)(2) to prevent a liability of a lower-tier partnership from being allocated to an upper-tier partnership when a partner of the lower-tier partnership and the upper-tier partnership bears the economic risk of loss for such liability.

### 3. Related Party Rules

#### A. Constructive Owner of Stock

Under §1.752-4(b)(1), a person is related to a partner if the partner and the person bear a relationship to each other that is specified in sections 267(b) or 707(b)(1), except that 80 percent or more is substituted for 50 percent or more in each of those sections, a person's family is determined by excluding siblings, and sections 267(e)(1) and 267(f)(1)(A) are disregarded.

In determining whether a partner and a person bear a relationship to each other that is specified in section 267(b), the constructive stock ownership rules in section 267(c) are applicable. Specific to partnerships, section 267(c)(1) provides, in part, that stock owned directly or indirectly by or for a partnership is considered as being owned proportionately by or for its partners. Therefore, if a partnership owns all of the stock in a corporation, a partner that owns 80 percent or more of the interests in the partnership is considered to be related to the corporation under §1.752-4(b)(1). If the corporation

has a payment obligation with respect to a liability of its partnership owner, or the corporation lends to the partnership and the economic risk of loss for the liability is not borne by another partner, any partner that is treated as related to the corporation bears the economic risk of loss for the partnership liability under §1.752-2. The IRS and the Treasury Department believe that partners in a partnership, where that partnership owns stock in a corporation that is a lender to the partnership or has a payment obligation with respect to a liability of its partnership owner, should not be treated as related, through ownership of the partnership, to the corporation. A partner's economic risk of loss that is limited to the partner's equity investment in the partnership should be treated differently than the risk of loss beyond that investment. Thus, for purposes of §1.752-4(b)(1), the proposed regulations disregard section 267(c)(1) in determining whether a partner in a partnership is considered as owning stock in a corporation to the extent the corporation is a lender or has a payment obligation with respect to a liability of its partnership owner.

#### B. Person Related to Multiple Partners

Section 1.752-4(b)(2)(i) provides that if a person is related to more than one partner in a partnership under §1.752-4(b)(1), the related party rules in §1.752-4(b)(1) are applied by treating the person as related only to the partner with whom there is the highest percentage of related ownership (greatest percentage rule). If, however, two or more partners have the same percentage of related ownership and no other partner has a greater percentage, the liability is allocated equally among the partners having the equal percentages of related ownership.

The IRS and the Treasury Department have recently received comments requesting that the greatest percentage rule be removed. The commenter explains that if a person is related to more than one partner under §1.752-4(b)(1), the ultimate determination of a person's relatedness to a partner should not be based on which partner has the highest percentage of related ownership because differences in ownership percentages within a 20-percent range do not justify treating a person as related to one partner over another. After considering the comments, the IRS and the Treasury Department agree with the comments, especially given the administrative burden associated with determining precise ownership percentages above the 80-percent threshold in §1.752-4(b)(1)(i). Therefore, the proposed regulations remove the greatest percentage rule and provide that if a person is a lender or has a payment obligation for a partnership liability and is related to more than one partner, those partners share the liability equally.

C. Related Partner Exception to Related Party Rules

Section 1.752-4(b)(2)(iii) provides that persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership (the related partner exception). The IRS and the Treasury Department are aware that taxpayers are uncertain of the application of the related partner exception following the decision in IPO II v. Commissioner, 122 T.C. 295 (2004). IPO II involved an individual, Mr. Forsythe, who owned 100 percent of an S corporation, Indeck Overseas, and 70 percent of a second S corporation, Indeck Energy. Mr. Forsythe's children owned the remaining 30 percent of Indeck Energy. Mr. Forsythe and Indeck



Overseas formed a partnership, IPO II, which received a loan from a bank. To secure that loan, Mr. Forsythe, Indeck Energy, and Indeck Power (a C corporation of which Mr. Forsythe owned 63 percent) entered into guarantees with the bank. IPO II allocated 99 percent of the increase in basis attributable to this liability to Indeck Overseas. Id. at 296-97. The Tax Court held that this allocation was incorrect because Indeck Overseas was not directly or indirectly liable for the debt. The court, while stressing that it interprets “the policy behind the related partner exception as preventing the shifting of basis from a party who bears actual economic risk of loss to one who does not,” did not end its analysis by stating that Mr. Forsythe guaranteed the debt, and thus his economic risk of loss could not be shifted to Indeck Overseas which did not guarantee the debt. Id. at 303. The court instead examined whether Indeck Overseas indirectly bore the economic risk of loss due to its relationship with a related party, Indeck Energy. The Tax Court held that the relationship between Indeck Overseas and Indeck Energy arose through Mr. Forsythe. Because the related partner exception shuts off the relationship between Mr. Forsythe and Indeck Overseas, it should be turned off for all purposes; therefore, Indeck Energy was not related to Indeck Overseas. Id. at 304.

The IRS and Treasury Department believe the related partner exception should only apply where a partner has a payment obligation or is the lender with respect to a partnership liability. IPO II may be read to expand the related partner exception to turn off relationships between related partners in a partnership without limitation. Under this broad interpretation, the related partner exception could be improperly applied to turn off attribution of economic risk of loss between related partners even when none of the related partners directly bears the economic risk of loss for a partnership liability. The

IRS and the Treasury Department believe that such an interpretation could have unintended results, including causing intercompany debts to be treated as nonrecourse because no partner alone owns 80 percent or more of the lending company and the partners are not treated as related to each other. The proposed regulations provide that the related partner exception only applies when a partner bears the economic risk of loss for a liability of the partnership because the partner is a lender under §1.752-2(c)(1) or has a payment obligation for the partnership liability. The proposed regulations also clarify that an indirect interest in a partnership is an indirect interest through one or more partnerships.

#### 4. Request for Comments: Liquidating Distributions of Tiered Partnership Interests

The IRS and the Treasury Department are considering the proper treatment of liabilities when an upper-tier partnership (transferor) bears the economic risk of loss for a lower-tier partnership liability and distributes, in a liquidating distribution, its interest in the lower-tier partnership to one of its partners (transferee) but the partner does not bear the economic risk of loss for the lower-tier partnership's liability. The IRS and the Treasury Department request comments on the timing of the liability reallocation relative to the transaction that causes the liability to change from recourse to nonrecourse.

#### **Proposed Applicability Date**

The regulations are proposed to apply to liabilities incurred or assumed by a partnership on or after the date these regulations are published as final regulations in the **Federal Register**, other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations. Because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these proposed regulations are Caroline E. Hay and Deane M. Burke, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.752-0 is amended by:

1. Revising the entry for §1.752-2(a) and adding new entries for §1.752-2(a)(1) and (a)(2).

2. Revising the entry for §1.752-4(b)(2); removing the entries for §1.752-4(b)(2)(i), (b)(2)(ii), and (b)(2)(iii); redesignating the entries for §1.752-4(b)(2)(iv), (b)(2)(iv)(A) and (b)(2)(iv)(B) as §1.752-4(b)(4), (b)(4)(i), and (b)(4)(ii), respectively; and removing the entry for §1.752-4(b)(2)(iv)(C).

3. Adding new entries for §1.752-4(b)(3) and (b)(5).

The revisions and additions read as follows:

#### §1.752-2 Partner's share of recourse liabilities

(a) Partner's share of recourse liabilities.

(1) In general.

(2) Overlapping economic risk of loss.

\* \* \* \* \*

#### §1.752-4 Special rules

\* \* \*

(b) \* \* \*

(2) Related partner exception.

- (3) Person related to more than one partner.
- (4) Special rule where entity structured to avoid related person status.
  - (i) In general.
  - (ii) Ownership interest.
- (5) Examples.

\* \* \* \* \*

Par. 3. Section 1.752-2 is amended by:

1. Redesignating paragraph (a) as paragraph (a)(1) and adding a heading to paragraph (a).
2. Adding paragraph (a)(2).
3. Adding Example 9 to paragraph (f).
4. Revising paragraphs (i)(1) and (2).
5. Adding a sentence to the end of paragraph (l).

The additions and revisions read as follows:

§1.752-2 Partner's share of recourse liabilities.

(a) Partner's share of recourse liabilities-- \* \* \*

(2) Overlapping economic risk of loss. For purposes of determining a partner's share of a recourse partnership liability, the amount of the partnership liability is taken into account only once. If the aggregate amount of the economic risk of loss that all partners are determined to bear with respect to a partnership liability (or portion thereof) under paragraph (a)(1) of this section (without regard to this paragraph (a)(2)) exceeds the amount of such liability (or portion thereof), then the economic risk of loss borne by each partner with respect to such liability shall equal the amount determined by multiplying:

- (i) The amount of such liability (or portion thereof) by

(ii) The fraction obtained by dividing the amount of the economic risk of loss that such partner is determined to bear with respect to that liability (or portion thereof) under paragraph (a)(1) of this section, by the sum of such amounts for all partners.

\* \* \* \* \*

(f) \* \* \*

Example 9. Overlapping economic risk of loss. (i) A and B are unrelated equal members of limited liability company, AB. AB is treated as a partnership for federal tax purposes. AB borrows \$1,000 from Bank. A guarantees payment for the entire amount of AB's \$1,000 liability and B guarantees payment for \$500 of the liability. Both A and B waive their rights of contribution against each other.

(ii) Because the aggregate amount of A's and B's economic risk of loss under paragraph (a)(1) of this section (\$1,500) exceeds the amount of AB's liability (\$1,000), the economic risk of loss borne by A and B each is determined under paragraph (a)(2) of this section. Under paragraph (a)(2) of this section, A's economic risk of loss equals \$1,000 multiplied by  $\$1,000/\$1,500$  or \$667, and B's economic risk of loss equals \$1,000 multiplied by  $\$500/\$1,500$  or \$333.

\* \* \* \* \*

(i) \* \* \*

(1) The amount of liabilities with respect to which the upper-tier partnership has the payment obligation or is the lender as provided in paragraph (c) of this section; and

(2) The amount of any other liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss, provided the partner is not a partner in the lower-tier partnership.

\* \* \* \* \*

(l) \* \* \* Paragraphs (a)(2), (f) Example 9, and (i) of this section apply to liabilities incurred or assumed by a partnership on or after the date these proposed regulations are published as final regulations in the **Federal Register**, other than liabilities incurred

or assumed by a partnership pursuant to a written binding contract in effect prior to that date.

Par. 4. Section 1.752-4 is amended by:

1. Removing the word “and” at the end of paragraph (b)(1)(ii).
2. Removing “267(f)(1)(A).” at the end of (b)(1)(iii) and adding in its place “267(f)(1)(A); and”.
3. Adding paragraph (b)(1)(iv).
4. Revising paragraph (b)(2).
5. Adding paragraphs (b)(3), (4), and (5).

The additions and revisions read as follows:

§1.752-4 Special rules.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Disregard section 267(c)(1) in determining whether stock of a corporation owned, directly or indirectly, by or for a partnership is considered as being owned proportionately by or for its partners if the corporation is a lender as provided in §1.752-2(c) or has a payment obligation with respect to a liability of the partnership.

(2) Related partner exception. Notwithstanding paragraph (b)(1) of this section (which defines related person), if a person who owns (directly or indirectly through one or more partnerships) an interest in a partnership is a lender as provided in §1.752-2(c) or has a payment obligation with respect to a partnership liability, or portion thereof, then other persons owning interests directly or indirectly (through one or more

partnerships) in that partnership are not treated as related to that person for purposes of determining the economic risk of loss borne by each of them for such partnership liability, or portion thereof. This paragraph (b)(2) does not apply when determining a partner's interest under the de minimis rules in §1.752-2(d) and (e).

(3) Person related to more than one partner. If a person that is a lender as provided in §1.752-2(c) or that has a payment obligation with respect to a partnership liability, or portion thereof, is related to more than one partner under paragraph (b)(1) of this section, the partnership liability, or a portion thereof, is shared equally among such partners.

(4) Special rule where entity structured to avoid related person status--(i) In general. If—

(A) A partnership liability is owed to or guaranteed by another entity that is a partnership, an S corporation, a C corporation, or a trust;

(B) A partner or related person owns (directly or indirectly) a 20 percent or more ownership interest in the other entity; and

(C) A principal purpose of having the other entity act as a lender or guarantor of the liability was to avoid the determination that the partner that owns the interest bears the economic risk of loss for federal income tax purposes for all or part of the liability; then the partner is treated as holding the other entity's interest as a creditor or guarantor to the extent of the partner's or related person's ownership interest in the entity.

(ii) Ownership interest. For purposes of paragraph (b)(4)(i) of this section, a person's ownership interest in:



(A) A partnership equals the partner's highest percentage interest in any item of partnership loss or deduction for any taxable year;

(B) An S corporation equals the percentage of the outstanding stock in the S corporation owned by the shareholder;

(C) A C corporation equals the percentage of the fair market value of the issued and outstanding stock owned by the shareholder; and

(D) A trust equals the percentage of the actuarial interests owned by the beneficial owner of the trust.

(5) Examples. The following examples illustrate the principles of paragraph (b) of this section.

Example 1. Person related to more than one partner. A owns 100 percent of X, a corporation. X owns 100 percent of Y, a corporation. A and X are equal members of P, a limited liability company treated as a partnership for federal tax purposes. Y guarantees payment of a liability of P of \$1,000. A and X are not lenders as provided in §1.752-2(c) and do not otherwise have a payment obligation with respect to the liability. Therefore, paragraph (b)(2) of this section does not apply for purposes of determining the economic risk of loss borne by A and X. Under paragraph (b)(1) of this section, Y is related to A and X. Therefore, under paragraph (b)(3) of this section, A and X each have a \$500 share of the \$1,000 liability.

Example 2. Related partner exception. A owns 100 percent of two corporations, X and Y. A and Y are members of P, a limited liability company treated as a partnership for federal tax purposes. P borrows \$1,000 from Bank. A and X each guarantee payment of the \$1,000 debt owed to Bank. A and Y are not treated as related to each other pursuant to paragraph (b)(2) of this section because A has the payment obligation with respect to the \$1,000 debt pursuant to §1.752-2(b). Y is therefore not treated as related to X. Because A is the only partner that bears the economic risk of loss for P's \$1,000 liability, A's share of the liability is \$1,000 under §1.752-2(a)(1).

Example 3. Related partner exception. A owns 100 percent of two corporations, X and Y. X owns 79 percent of a corporation, Z, and Y owns the remaining 21 percent of Z. X and Y are members of P, a limited liability company treated as a partnership for federal tax purposes. P borrows \$2,000 from Bank. Both X and Z guarantee payment of the \$2,000 debt owed to Bank. X has a payment obligation with respect to P's \$2,000 liability; therefore, paragraph (b)(2) of this section applies and X and Y are not treated as related for purposes of determining the economic risk of loss borne by each

of them for P's \$2,000 liability. Because X and Y are not treated as related, and neither owns an 80 percent or more interest in Z, neither X nor Y is treated as related to Z under paragraph (b)(1) of this section. Because X bears the economic risk of loss for P's \$2,000 liability, X's share of the liability is \$2,000 under §1.752-2(a)(1).

Example 4. Related partner exception and person related to more than one partner. Same facts as in Example 3, but X guarantees payment of only \$1,200 of the debt owed to Bank and Z guarantees payment of \$2,000. Pursuant to paragraph (b)(2) of this section, X and Y are not treated as related to the extent of X's \$1,200 guarantee. Because X bears the economic risk of loss for \$1,200 of P's \$2,000 liability, X's share of the liability is \$1,200 under §1.752-2(a)(1). In addition, because paragraph (b)(2) of this section does not apply with respect to the remaining portion of the liability that X did not guarantee, X and Y are treated as related for purposes of the remaining \$800 of the liability pursuant to paragraph (b)(1) of this section. Therefore, Z is treated as related to X and Y under paragraph (b)(1) of this section. Pursuant to paragraph (b)(3) of this section, X and Y share the \$800 equally. In sum, X's share of P's \$2,000 liability is \$1,600 (\$1,200 under §1.752-2(a)(1) and \$400 under paragraph (b)(3) of this section) and Y's share of P's \$2,000 liability is \$400 under paragraph (b)(3) of this section.

Example 5. Entity structured to avoid related person status. A, B, and C form a general partnership, ABC. A, B, and C are equal partners, each contributing \$1,000 to the partnership. A and B want to loan money to ABC and have the loan treated as nonrecourse for purposes of section 752. A and B form partnership AB to which each contributes \$50,000. A and B share losses equally in partnership AB. Partnership AB loans partnership ABC \$100,000 on a nonrecourse basis secured by the property ABC buys with the loan. Under these facts and circumstances, A and B bear the economic risk of loss with respect to the partnership liability equally based on their percentage interest in losses of partnership AB.

\* \* \* \* \*

Par. 5. Section 1.752-5 is amended by adding a second sentence in paragraph (a) and removing the word "However" at the beginning of the third sentence and adding in its place "In addition".

The addition reads as follows:

§1.752-5 Effective dates and transition rules.

(a) \* \* \* However, §1.752-4(b)(1)(iv), (b)(2), (b)(3), and (b)(5) Examples 1, 2, 3, and 4 apply to any liability incurred or assumed by a partnership on or after the date that these regulations are published as final regulations in the **Federal Register**, other than

a liability incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date. \* \* \*

\* \* \* \* \*

Beth Tucker

Deputy Commissioner for Operations Support.

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